

**IN THE SUPREME COURT OF MISSOURI**

**COOPER COUNTY, MISSOURI,  
A BODY POLITIC AND CORPORATE,  
BY AND THROUGH ITS GOVERNING BODY, THE  
COUNTY COMMISSION OF  
COOPER COUNTY, MISSOURI,**

Petitioner/Respondent

vs.

Supreme Court No. SC85312

**CIRCUIT COURT OF THE 18TH  
JUDICIAL CIRCUIT OF MISSOURI,  
DONALD BARNES  
PRESIDING CIRCUIT JUDGE,**

Respondent/Appellant.

**ON APPEAL FROM  
THE JUDICIAL FINANCE COMMISSION  
OF THE STATE OF MISSOURI  
CASE NO. 03-0064**

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**APPELLANT'S REPLY BRIEF**

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CIRCUIT COURT OF THE 18TH  
JUDICIAL CIRCUIT OF MISSOURI,  
DONALD BARNES PRESIDING CIRCUIT  
JUDGE**

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**A) THIS YEAR’S PROCEEDING IS A DIFFERENT SITUATION AND CLAIM IN THAT THE DETERMINATION OF THE REASONABLENESS BY THE JUDICIAL FINANCE COMMISSION OF A CIRCUIT COURT’S BUDGET IS DONE ON A YEARLY BASIS PURSUANT TO STATUTE;**

**B) THE DECISION BY THE JUDICIAL FINANCE COMMISSION IN REGARD TO THE 2002 BUDGET WAS NOT A FINAL JUDGMENT FOR PURPOSES OF INVOKING THE DOCTRINES OF RES JUDICATA OR COLLATERAL ESTOPPEL IN THAT THERE WAS NO APPEAL FROM THE 2002 JUDICIAL FINANCE COMMISSION DECISION FOR THE REASON THAT THE ISSUES BETWEEN THE PARTIES BECAME MOOT AS A RESULT OF CONTINUING GRANT FUNDING AND THEREFORE THERE WAS NO JUSTICIABLE CONTROVERSY BETWEEN THE PARTIES TO BE**

**PURSUED BY APPEAL TO THIS COURT; AND**

**C)THESE DEFENSES WERE WAIVED IN THAT THE DEFENSES WERE NOT PLEA**

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**POINT RELIED ON IN REPLY**

**I.**

**THIS YEAR'S PROCEEDING BEFORE THE JUDICIAL FINANCE COMMISSION IS NOT BARRED BY THE PRINCIPALS OF RES JUDICATA OR COLLATERAL ESTOPPEL BECAUSE:**

- A) THIS YEAR'S PROCEEDING IS A DIFFERENT SITUATION AND CLAIM IN THAT THE DETERMINATION OF THE REASONABLENESS BY THE JUDICIAL FINANCE COMMISSION OF A CIRCUIT COURT'S BUDGET IS DONE ON A YEARLY BASIS PURSUANT TO STATUTE;**
- B) THE DECISION BY THE JUDICIAL FINANCE COMMISSION IN REGARD TO THE 2002 BUDGET WAS NOT A FINAL JUDGMENT FOR PURPOSES OF INVOKING THE DOCTRINES OF RES JUDICATA OR COLLATERAL ESTOPPEL IN THAT THERE WAS NO APPEAL FROM THE 2002 JUDICIAL FINANCE COMMISSION DECISION FOR THE REASON THAT THE ISSUES BETWEEN THE PARTIES BECAME MOOT AS A RESULT OF CONTINUING GRANT FUNDING AND THEREFORE THERE WAS NO JUSTICIABLE CONTROVERSY BETWEEN THE PARTIES TO BE PURSUED BY APPEAL TO THIS COURT; AND**
- C) THESE DEFENSES WERE WAIVED IN THAT THE DEFENSES**

**WERE NOT PLEAD BEFORE THE JUDICIAL FINANCE  
COMMISSION AND MAY NOT BE RAISED FOR THE FIRST TIME  
ON APPEAL.**

Lamont v. Lamont, 922 S.W.2d 81 at footnote 1 (Mo. App. 1996).

State ex. rel RAS INV., Inc. v. Landon, 75 S.W.3d 847 at 849 (Mo. App. 2002).

§50.640, RSMo. 1995.

## **ARGUMENT**

### **I.**

**THIS YEAR'S PROCEEDING BEFORE THE JUDICIAL FINANCE COMMISSION IS NOT BARRED BY THE PRINCIPALS OF RES JUDICATA OR COLLATERAL ESTOPPEL BECAUSE:**

- A) THIS YEAR'S PROCEEDING IS A DIFFERENT SITUATION AND CLAIM IN THAT THE DETERMINATION OF THE REASONABLENESS BY THE JUDICIAL FINANCE COMMISSION OF A CIRCUIT COURT'S BUDGET IS DONE ON A YEARLY BASIS PURSUANT TO STATUTE;**
- B) THE DECISION BY THE JUDICIAL FINANCE COMMISSION IN REGARD TO THE 2002 BUDGET WAS NOT A FINAL JUDGMENT FOR PURPOSES OF INVOKING THE DOCTRINES OF RES JUDICATA OR COLLATERAL ESTOPPEL IN THAT THERE WAS NO APPEAL FROM THE 2002 JUDICIAL FINANCE COMMISSION DECISION FOR THE REASON THAT THE ISSUES BETWEEN THE PARTIES BECAME MOOT AS A RESULT OF CONTINUING GRANT FUNDING AND THEREFORE THERE WAS NO JUSTICIABLE CONTROVERSY BETWEEN THE PARTIES TO BE PURSUED BY APPEAL TO THIS COURT; AND**
- C) THESE DEFENSES WERE WAIVED IN THAT THE DEFENSES**

**WERE NOT PLEAD BEFORE THE JUDICIAL FINANCE  
COMMISSION AND MAY NOT BE RAISED FOR THE FIRST TIME  
ON APPEAL.**

The controversy between the parties has existed since the year 2000. In each year Appellant budgeted the entire deputy juvenile officer's salary in anticipation that grant funding may be discontinued. Each year the Respondent has filed a Petition for Review with the Judicial Finance Commission pursuant to §50.640.

In the years 2000, 2001, and 2002, continuation of grant funding was confirmed to Appellant. In the years 2000 and 2002, confirmation of the grant funding was received in time for the parties to reach a settlement without the necessity of decision by the Judicial Finance Commission. (Append. A2-A7). In the year 2001, the Judicial Finance Commission rendered a decision before grant funding was confirmed and the parties reached a settlement. However, the parties reached the same settlement in 2001 that they had reached in prior years, which was the Respondent would pay that portion of the deputy juvenile officer's salary not covered by the grant funding. In the year 2002, the Respondent again filed a Petition for Review and contested the County's obligation to pay any sum for the deputy juvenile officer's salary, including that portion not covered by the state grant. However, in 2002 the same agreement as prior years was reached and



grant funding was confirmed and Respondent paid that portion of the deputy juvenile officer's salary not covered by the state grant. (Append. A5-A7).

There was no appeal of the 2001 Judicial Finance Commission decision because the issue was moot between the parties and there was no justiciable controversy that merited consideration by this Court. The current case before the Court regarding the year 2003 is the first year since 2000 that the Division of Youth Services grant funding was actually terminated. Out of four consecutive petitions for review to the Judicial Finance Commission, this is the first occasion where a justiciable controversy between the parties has continued to exist requiring consideration of the issues by this Court.

Both Respondent and Appellant have known since the first case between them in 2000 that there was in reality no justiciable controversy between them so long as the state Division of Youth Services grant funding continued. Until that grant funding was actually discontinued, any judgment by the Judicial Finance Commission had no practical effect on the controversy existing between the parties. In such circumstances, the case is moot making this Court's decision unnecessary and therefore no controversy existing sufficient to support appellate jurisdiction. State ex. rel RAS INV., Inc. v. Landon, 75 S.W.3d 847 at 849 (Mo. App. 2002). A case can even become mooted after the inception of an appeal if there is an intervening event which changes the positions of the parties such that a judgment by the Appellate Court becomes a hypothetical opinion. Id.

Although Respondent relies on the 2001 Judicial Finance Commission decision as a basis for using res judicata or collateral estoppel, neither of these defenses were specifically raised in the Petition for Review filed with the Judicial Finance Commission in the current year or 2002. Res judicata and collateral estoppel are defenses that are affirmative defenses that must be specifically pled and cannot be raised for the first time on appeal. Lamont v. Lamont, 922 S.W.2d 81 at footnote 1 (Mo. App. 1996).

### **CONCLUSION**

The defenses of res judicata and collateral estoppel do not apply to this case because this is the first year there has been a continuing justiciable controversy requiring consideration of the issues by this Court. Additionally, these defenses were not plead before the Judicial Finance Commission and may not be raised for the first time on appeal.

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## **CERTIFICATE OF COMPLIANCE**

I, the undersigned counsel for Appellant, hereby certify pursuant to Rule 84.06(c) that the foregoing Appellant's brief (1) includes the information required by Rule 55.03; (2) complies with the limitations contained in Rule 84.06(b); and (3) contains 1,210 words, excluding the sections excepted by Rule 84.06(b)(2) of the Missouri Supreme Court Rules, based on the word count that is part of WordPerfect 6.1.

I do hereby further certify that the double-sided, high density, IBM-PC-compatible 1.44 MB, 3 ½-inch size disks provided to the Missouri Supreme Court and the Attorney for Respondent have been scanned for viruses and that they are virus-free.

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## **CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify by my signature that two true and complete copies of the foregoing Appellant's Brief, together with a floppy disk, were served this 31st day of October, 2003, by depositing the same in the U.S. Mail, postage prepaid and properly addressed to Mr. William McCullah, Attorney for Petitioner, P.O. Box 370, Forsyth, MO 65653.

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